

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 13, 2001

D036577 In re Omar S., a Juvenile

The orders selecting adoption as Omar and Alexis's permanent plan and terminating Maria's parental rights are affirmed. O'Rourke, J.; We Concur: Kremer, P.J., McDonald, J.

D034781 People v. Ramirez

The judgment is affirmed. Kremer, P.J.; We Concur: Haller, J., McDonald, J.

D037285 In re Carlos Angel Y. et al. Juveniles

The attorney for petitioner Dulce Q. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D036475 In re Jeffrey H., a Juvenile

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P. J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

Deputy Clerk: D. E. Moore

D034882 Zoebisch v. Abdelnour et al.

Cause called on merits. James Bruce Henderson, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent, Abdelnour. Kathryn Karcher, Esq. joined in Mr. Bird's argument. Mr. Henderson replied for appellant. Cause submitted.

Court recessed at 9:24 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

D034882 Fonseca et al. v. Vasich

Cause called on merits. Horacio Barraza, Esq. argued for appellant. Randall L. Winet, Esq. argued for respondent. Mr. Barraza replied for appellant. Cause submitted.

Court recessed at 9:45 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

Deputy Clerk: D. E. Moore

D035212 ETE, Inc. v. Maxwell Information Systems, Inc. et al.

Cause called on merits. William M. Rathbone, Esq. argued for appellant. Robert Kenny, Esq. argued for respondent. Mr. Rathbone replied for appellant. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 13, 2001 (Continued)

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller

D033527 People etc. v. Englebrecht, Jr.

Cause called on merits. Candace Carroll, Esq. argued for appellant. Susan K. Mazza, Deputy District Attorney argued for respondent. Ms. Carroll replied for appellant. Cause submitted.

D034873 People v. Davis

Cause called on merits. Gregory L. Rickard, Esq. argued for appellant. Randy Einhorn, Deputy Attorney General argued for respondent. Mr. Rickard replied for appellant.

D036531 Hull v. Hull

Cause called on merits. Richard Keys, Esq. argued for appellant. Stephen James Tully, Esq. argued for respondent, Joseph Palty. Robert L. Green, Esq. argued for respondent, Robert Hull. Mr. Keys replied for appellant. Cause submitted.

D034535) Swain et al. v. Harris

D035725) Harris et al. v. Swain

Cause called on merits. Jean Leonard Harris, Esq. argued for appellant. Manuel Corrales, Jr., Esq. argued for respondent, Swain. Marc D. Mabile, Esq. argued for respondent, Seymour. Mr. Harris replied for appellant. Cause submitted.

Court recessed at 4:35 p.m. until Wednesday, February 14, 2001 at 9:00 a.m.

D037239 Morcos v. Masterpiece Publishing, Inc.

Pursuant to California Rules of Court, rule 10(c), the appeal filed January 4, 2001, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rules 4(a) and 5(a)).

D035121 VBCO et al. v. Kearny Electric Supply Company, McBride Electric Inc.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately as to McBride Electric, Inc. Each party to bear own costs on appeal.

D036941 Purcell Group, Inc. v. Insurance Commissioner of the State of California/Creditors Adjustment Bureau, Inc.

On the Court's own motion, this court's order of February 2, 2001, dismissing the above-entitled appeal is vacated and the appeal is reinstated. The San Diego County Clerk of the Superior Court is directed to prepare and transmit to this court the record on appeal on or before March 8, 2001.

D036431 People v. Aguilar

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 14, 2001

D035299 People v. Yousuf

The judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., Huffman, J.

D033133 People v. Kaplan

The petition for rehearing is denied.

D036433 People v. Montoya

The judgment is affirmed. Work, Acting P.J.; We Concur: Benke, J., O'Rourke, J.

D037376 In re Abdul Hakim Young F., a Juvenile

The Welfare & Institution Code, section 366.26 hearing was on June 16, 2000 and any notice of appeal had to be filed within 60 days. Appellant does not have standing to appeal the ruling of the post permanency plan review hearing on January 2, 2001. The appeal is dismissed.

D034913 County of Riverside et al. v. Harvill et al.

Judgment affirmed. Benke, Acting P.J.; We Concur: Nares, J., McDonald, J.

D034571 In re Azurin on Habeas Corpus

Order modifying opinion an denying rehearing, certifying opinion for publication [No change in judgment].

D036944 Kimball v. Austin

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)).

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Deputy Clerk: D. E. Moore

D034653 Gonzales v. Gerwend Enterprises et al.

Cause called on merits. Ron Mix, Esq. argued for appellant. James S. Marinos, Esq. argued for respondent. Mr. Mix replied for appellant. Cause submitted.

D036484 Protomark, Inc. v. Armstrong Petroleum Corporation

Cause called on merits. Cause called on merits. Frederic D. Cohen, Esq. argued for appellant. Thomas Reed Malcolm, Esq. argued for respondent. Mr. Cohen replied for appellant. Cause submitted.

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Deputy Clerk: D. E. Moore

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 14, 2001 (Continued)

D036856 Sarkozi v. Andrews

Cause called on merits. Joseph Connaughton, Esq. argued for respondent. Thomas Gary Kieviet, Esq. argued for appellant. Cause submitted.

D035435 Ragen v. Peterson

Cause called on merits. David A. Niddrie, Esq. argued for appellant. Sandra J. Brower, Esq. argued for respondent. Mr. Niddrie replied for appellant. Cause submitted.

Court recessed at 11 a.m. until 1:30 p.m.

D035638 Mitchell v. California Department of Social Services

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D036875 Munna et al. v. Acquaro

Pursuant to California Rules of Court, rule 10(c), the appeal filed October 26, 2000, is DISMISSED for failure of appellant to timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rules 4(c) and 5(c)).

D036105 Blair v. City of San Diego, et al.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is DISMISSED.

D037083 Benson v. Superior Court of Imperial County/People

The petition is denied as moot.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Deputy Clerk: D. E. Moore

D036450 Lifetime Memory Products, Inc. v. Century Indemnity Company

Cause called on merits. Kurt Edward Wilson, Esq. argued for appellant/cross-respondent. Richard Buckner, Esq. argued for respondent/cross-appellant. Mr. Wilson replied for appellant. Cause submitted.

Court recessed at 2:20 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D036520 Dosanjh v. Disneyland, Inc.

Cause called on merits. Richard Everette McCain, Esq. argued for appellant. Dean Bailis Gordon, Esq. argued for respondent. Mr. McCain replied for appellant. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

February 14, 2001 (Continued)

D034285 People v. Protsman

Cause called on merits. Roberta K. Thyfault, Esq. argued for appellant. Steve Oetting, Deputy Attorney General argued for respondent. Ms. Thyfault replied for appellant. Cause submitted.

D034678 Ferreira v. Gray, Cary, Ware & Freidenrich

Cause called on merits. Thomas W. Bettles, Esq. argued for respondent. Richard J. Annen, Esq. argued for appellant. Cause submitted.

D036528 Rexroad v. Farmers Insurance Exchange, et al.

Cause called on merits. Martin E. Dack, Esq. argued for appellant. Todd A. Picker, Esq. argued for respondent, Morgan. Mark Schaeffer, Esq. argued for respondent, Farmers Insurance Exchange. Mr. Dack replied for appellant. Cause submitted.

Court recessed at 4:20 p.m. until Thursday, February 15, 2001 at 9:00 a.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 15, 2001

D036424 People v. Yochem

The judgment is affirmed. Nares, J.; I Concur: McIntyre, J., I Concur in the Result: Huffman, J.

D037171 Chapman University v. Superior Court of Orange County/Kral et al.

The petition is denied.

D037322 Baumer v. Superior Court of San Diego County/People

The petition is denied.

D037172 Chapman University v. Superior Court of Orange County/Miller et al.

The petition is denied.

D037119 Chapman University et al. v. Superior Court of Orange County/Cooper et al.

The petition is denied.

D036590 Pattison v. Superior Court of Orange County/Chapman University

The petition is denied.

D036589 Goehring v. Superior Court of Orange County/Chapman University et al.

The petition is denied.

D037204 In re Christopher M.,

The attorney for petitioner Robert M. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D035096 People v. Creasy

This court's order of January 22, 2001, dismissing the appeal is vacated and the appeal is reinstated.

D034882 Fonseca et al. v. Vasich

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

Deputy Clerk: D. E. Moore

D036207 Productos Hola del Noreosete v. Superior Court/The Mexican Candy Company-RPI

Matter called on merits. John Morris, Esq. argued for petitioner. David Niddrie, Esq. argued for real party in interest. Mr. Morris replied for petitioner. Matter submitted.

Court recessed at 9:15 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 15, 2001 (Continued)

D036346 Drake v. Superior Court/City of Vista-RPI

Matter called on merits. Fredric D. Woocher, Esq. argued for petitioner. John Andrew Ramirez, Esq. argued for real party in interest, City of Vista. Mr. Woocher replied for petitioner. Matter submitted.

Court recessed at 9:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Deputy Clerk: D. E. Moore

D034042 People v. Jimenez

Cause called on merits. Robert L. Swain, Esq. argued for appellant. Susan Miller, Deputy Attorney General argued for respondent. Mr. Swain replied for appellant. Cause submitted.

D035336 In re Marriage of Dupont

Cause called on merits. Mary Tilton, Deputy Attorney General argued for appellant. Dennis O. Seymour, Esq. argued for respondent. Ms. Tilton replied for appellant. Cause submitted.

Court recessed at 2:05 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D035119 Triprism, Inc. v. Dellastatious et al.

Cause called on merits. Raymond D. Kitlas, Esq. argued for appellant. Michael F. Millerick, Esq. argued for respondent. Mr. Kitlas replied for appellant. Cause submitted.

D035752 People v. Turner

Cause called on merits. Lynn G. McGinnis, Esq. argued for appellant. Matt Mulford, Deputy Attorney General argued for respondent. Ms. McGinnis replied for appellant. Cause submitted.

D034485 Full-Swing, Inc. v. Bair et al.

Cause called on merits. John Morris, Esq. argued for appellant. Fletcher W. Paddison, Esq. argued for respondent. Mr. Ross replied for appellant. Cause submitted.

Court recessed at 3:15 p.m. until Friday, February 16, 2001 at 9:00 a.m.

D035314 Rimmer v. Galascione et al.,

It is ordered that the opinion filed herein on January 23, 2001, be modified as follows:

On page 16, the first sentence in the first paragraph is changed to read: The lay definition of "northwesterly" is : "Toward or in the northwest" (American Heritage Dict. (New College Ed. 1976) p. 896), implying a more general term for the easement as being for a view over the generally "northwesterly" portion of Lot 13. There is no change in judgment. Appellant's petition for rehearing is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 15, 2001 (Continued)

D036485 People v. Jointer

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D035533 THG Enterprises, Inc. v. City of Oceanside et al.

The February 2000 order awarding THG attorney fees in the amount of \$2,323.84 as against Oceanside is affirmed. The April 2000 order granting Solana Beach's motion for reconsideration is affirmed.

Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D036463 In re Edmonson on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 16, 2001

D036349 In re J. D. a Juvenile

Judgment affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Judith Haller and Alex McDonald
Deputy Clerk: D. E. Moore

D036426 Del Cerro Mobile Estates v. Proffer

Cause called on merits. Jack Marlo, Esq. argued for appellant. Vincent Lee Goodwin, Esq. argued for respondent. Mr. Marlo replied for appellant. Cause submitted.

D036492 Castro v. American States Insurance Company, Inc.

Cause called on merits. Meryle Grace Hammatt, Esq. argued for appellant. Philip George Dorn, Esq. argued for respondent. Ms. Hammatt replied for appellant. Cause submitted.

D033154 Wilborn v. DeCastro

Cause called on merits. Eric Erdman, Esq. argued for appellant. Greg Stephan, Esq. argued for respondent. Mr. Erdman replied for appellant. Cause submitted.

Court recessed at 10:20 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Alex McDonald and James McIntyre
Deputy Clerk: D. E. Moore

D034981 People v. Sparks

Cause called on merits. Robert E. Boyce, Esq. argued for appellant. Elizabeth Hartwig, Deputy Attorney General argued for respondent. Mr. Boyce replied for appellant. Cause submitted.

Court recessed at 2:00 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

D035233 Braham v. State of California, Department of Motor Vehicles

Cause called on merits. Kathryn M. Megli, Deputy Attorney General argued for appellant. Jill Church, Esq. argued for respondent. Ms. Megli replied for appellant. Cause submitted.

D034843 In re Edward M., a Juvenile

Cause called on merits. Cynthia M. Sorman, Esq. argued for appellant. Kristine Gutierrez, Deputy Attorney General argued for respondent. Ms. Sorman replied for appellant. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 16, 2001 (Continued)

D033976 Gum v. H. H. Restaurant, Inc., et al.

Cause called on merits. Joe B. Cordileone, Esq. argued for appellant. Corinne Coleman Bertsche, Esq. argued for respondent. Mr. Cordileone replied for appellant. Cause submitted.

Court adjourned at 3:10 p.m.

D034897 San Diego Unified Port District v. Pacific Indemnity Company

In reviewing the briefs and record in the above-entitled matter the court has noted that the Supreme Court's recent decision in *Lloyds v. Superior Court* [D.A.R. 1259, Feb. 1, 2001] may have some bearing on the arguments asserted by appellant. Accordingly, appellant may, within 20 days of the date of this order, address the impact, if any, *Lloyds* has on its claims by way of letter brief not to exceed 20 pages. Respondent may, within 20 days after service of appellant's brief, file a responsive brief not exceeding 20 pages. The order setting this case for argument in March is vacated and the matter will be set on the May calendar. Benke, Acting P. J.

D035296 People v. Johnson

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D033435 WHGF Real Estate Ltd. Partnership v. Duarte et al. /First San Diego Properties XX et al.

The judgment is affirmed. The cross-appeal is dismissed. All parties are to bear their own costs, with the exception that Duarte shall pay the costs of WHGF on appeal. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D037241 Cullison v. Fallbrook Medical Group, Inc., et al.

The appeal filed January 19, 2001, is dismissed for appellant's failure to timely designate the record.

D035337 In re Anthony S., a Juvenile

The commitment order is modified to show the February 2, 1998 petition alleged robbery with the use of a deadly weapon (12022, subd. (b)(1)). The order is further modified to reflect a maximum term of nine years, eight months. The superior court is directed to modify the commitment order accordingly and forward a revised order to the California Youth Authority. In all other respects the dispositional order is affirmed. Huffman, J.; We Concur: Kremer, P.J., Nares, J.

D035212 ETE, Inc. v. Maxwell Information Systems, Inc.

In reviewing the briefs and record in this matter, two questions have arisen with respect to which the court desires additional briefing (*See order.) Appellant is directed to respond to these questions within 20 days of the date of this order by way of letter brief not exceeding 20 pages. Respondents may file a responsive letter brief, not exceeding 20 pages, within 20 days following service of appellant's letter brief. The order submitting this case is vacated and the matter will be resubmitted following receipt of the parties' briefing. Benke, Acting P. J.